

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 WILLIAM J. CUNDITT,

9 *Plaintiff,*

10 vs.

11 HIGH DESERT STATE PRISON, *et al.*

12 *Defendants.*  
13  
14

3:11-cv-00397-ECR-RAM

ORDER

15 Plaintiff has filed, at the very least, a civil rights complaint. Neither a filing fee nor an  
16 application to proceed *in forma pauperis* was received with the papers presented.

17 It does not appear from the actual factual allegations presented in the complaint that  
18 a promptly filed new civil rights action would be time-barred under the applicable two-year  
19 statute of limitations. The Court therefore will dismiss the improperly-commenced civil rights  
20 action without prejudice to a properly-commenced civil rights action.

21 Plaintiff additionally has submitted a stack of 268 additional pages with the complaint.  
22 In this stack, plaintiff has included either originals or copies of two Section 2255 motions that  
23 would seek to challenge his Nevada state conviction. See #1-1, at 13-27 and 34-46. It  
24 appears that one such motion may be a copy of papers that plaintiff sent to the American Civil  
25 Liberties Union. See #1-1, at 27. Out of an abundance of caution, the Court will direct the  
26 Clerk to open a new habeas action and file these motions therein along with a copy of this  
27 order. In the new habeas action, plaintiff first will have to satisfy the \$5.00 filing fee  
28 requirement for a habeas action or seek leave to proceed *in forma pauperis*. He further must

1 file any such request for federal habeas relief on a Section 2254 petition form. Once the new  
2 habeas action is opened, the presiding judge assigned to the new habeas action will issue  
3 orders directing the next action in that case, as to the filing fee and otherwise.

4 When plaintiff files a new civil rights action, he should note the following.

5 First, he can present only one complaint or petition per action. He may not submit  
6 multiple different pleadings at one time in one civil action.

7 Second, for each action filed, plaintiff must either pay the filing fee or submit an  
8 application to proceed *in forma pauperis* with all required financial attachments. The filing fee  
9 for a habeas action is \$5.00. The filing fee for a civil rights action is \$350.00, which,  
10 depending on petitioner's finances, may be paid in installments from petitioner's inmate trust  
11 account.

12 Third, plaintiff is not required to – and should not – file supporting papers with his civil  
13 rights complaint. He in particular does not need to file copies of his kites and grievances,  
14 correspondence, and research notes. Nor does he need to provide documentary proof of  
15 exhaustion of administrative remedies with the complaint. Plaintiff instead must state the  
16 material factual allegations supporting his claims within the four corners of the complaint itself.  
17 The Court will not look through a stack of documents for supporting facts in determining  
18 whether plaintiff has stated a claim upon which relief may be granted. Further, if plaintiff  
19 wishes particular relief from the Court over and above the requests for relief in the complaint,  
20 he must file a properly-captioned motion, not a letter. The Court will not sift through a stack  
21 of documents in an attempt to determine whether plaintiff is seeking relief in some attached  
22 letter rather than merely attaching a copy of a letter as supporting documentation.

23 Fourth, plaintiff may need to spell his name more clearly, as his lower case “f” may look  
24 like a lower case “t.” The Clerk read plaintiff's last name as “Cunditt” when it appears that  
25 plaintiff's last name instead is “Cundiff” in the NDOC materials attached with the complaint.


26 IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice  
27 to the filing of a new properly commenced civil rights action under a new docket number with  
28 either the required filing fee or a properly completed application to proceed *in forma pauperis*.

1 IT FURTHER IS ORDERED that the Clerk of Court shall open a new habeas action  
2 with a 530 nature of suit code and shall file a copy of the papers filed by plaintiff herein at #1-  
3 1, at 13-27 and 34-46, in that new habeas action along with a copy of this order, in a manner  
4 consistent with the Clerk's current practice in such matters.

5 The Clerk further shall send plaintiff two copies each of an *in forma pauperis*  
6 application form for a prisoner, a blank Section 1983 complaint form, and a Section 2254  
7 noncapital habeas petition form, together with one copy of the instructions for each form and  
8 a copy of #1-1, at 1-46.

9 Finally, as to the present civil rights action, the Clerk shall enter final judgment  
10 accordingly, dismissing this action without prejudice.

11 DATED: 7th day of June 2011.

12  
13  
14   
15 EDWARD C. REED  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28